



GOVERNOR DIRK KEMPTHORNE
Rx for the ESA: The Endangered Species Act at Thirty
University of California, Santa Barbara
Radisson Hotel
November 12, 2003

First, let me thank UC Santa Barbara and the Donald Bren School of Environmental Science & Management for being such gracious hosts.

This is a beautiful campus and a great school. Of course, I should recognize two other great schools that are collaborating on this conference: Columbia University, and the University of Idaho.

I am a graduate of the University of Idaho and am very proud of the work being advanced by my alma mater and by these other fine institutions.

I know that many of you here have degrees and advanced degrees in science and related fields. Many of you may not know that I also have a degree in science...political science. It has served me well.

Throughout my public service...as a former mayor of Idaho's capitol city of Boise, as a former United States Senator, and now as Governor, I have experienced first hand, just how much political science and environmental science are interrelated.

Of course, the environment is more than a policy discussion. When my schedule permits, I take every opportunity to enjoy Idaho's beautiful outdoors. Whether it's a casual picnic, a day trip on a mountain hike, or a weeklong outing in my camper, I love experiencing nature first hand.

There are parts of Idaho that remain virtually the same as they were when Lewis and Clark first encountered them 200 years ago: trees, river banks, meadows and mountains...all virtually untouched. The plants and animals that inhabit those areas are likely the progeny of those who lived there two centuries earlier.

On occasion, I go to a place called Indian Riffle, along the Salmon River. In the fall the normally peaceful waters are alive with the thrashing motions as hundreds of chinook salmon labor to spawn in the gravel beneath the clear running water. It is incredible to think that a journey of a thousand miles begins and ends there.

The young smolts start life in a downstream race to the ocean. Then, when the time is right, they instinctively find their way back to the mouth of the Columbia, fighting the current and at times defying the laws of gravity, to make the miraculous journey upstream. They return to the very place where life started, where they die, completing the circle and giving rise to a new cycle of life.

Is there any wonder why the salmon are the genesis of great cultural and spiritual significance to the Native American tribes? For me, there was no substitute for seeing and experiencing that miracle of nature.

But whether in the Gem state or the Golden state, enjoying and preserving these natural wonders does not come without challenges. Being here at UC Santa Barbara, I cannot overemphasize the importance that higher education plays in advancing our society. In Idaho, I have made investing in higher education a priority...not only because that's where we are teaching and training great thinkers, leaders and future decision makers, but also because I believe that our colleges and universities are the engines that drive our economy and the fuel that ignites cooperation and innovation in solving some of the world's most difficult problems.

Therefore, as we discuss the Endangered Species Act after 30 years, to reassess its purpose and functionality and to address the successes and shortcomings of the act, it is fitting that we gather at this institution of higher learning.

All of you who are here represent a vast repository of knowledge and experience. You come from diverse backgrounds and a variety of institutions across the country; you are scholars and practitioners from the public and private sectors ... and yet, regardless of your diverse interests and professions, all of us share a passion and concern for the health of our environment, the strength of our nation, and the well-being of our citizens.

I've always believed in the philosophy expressed by a former Governor of California and the 40th President of the United States, Ronald Reagan, who once said, "the preservation and enhancement of the values that strengthen and protect individual freedom, family life, communities and neighborhoods and the liberty of our beloved nation should be at the heart of any legislative or political program presented to the American people."

How does the Endangered Species Act fit into that paradigm? Is it a program that seeks to preserve or enhance genuine American values? There is no doubt that Americans share a genuine concern for the environment.

Conservation and environmental stewardship are not new to America. In 1868 Congress passed a law prohibiting the killing of certain fur-bearing animals in the territory of Alaska. From the mid 1800's to the mid 1900's, Congress followed with various legislation that conserved fisheries, established national forests and prohibited the interstate commerce of animals that were unlawfully harvested.

Republican President, Teddy Roosevelt, one of the fathers of modern conservation, brought conservation to mainstream America with the creation of the US Forest Service. His

sustained efforts followed from a belief that “natural resources needed to be managed for sustainable use so as to provide the greatest good to the greatest number of people over time.” Meanwhile, great minds like Aldo Leopold taught Americans to care about the land and the "wild things" that live on it.

In 1914 the last passenger pigeon, a species that had once covered the skies in flocks numbering in the millions, died in a zoo in Cincinnati. In the years that followed, Congress passed a litany of acts to protect species:

- the Migratory Bird Act
- the Fish and Wildlife Coordination Act
- the 1940 Bald Eagle Protection Act.
- In the 1960's, a national environmental movement led to a series of further steps to protect habitat and preserve species:
- Congress created the National Wilderness Preservation System
- The Bureau of Sport Fisheries and Wildlife (later renamed the U.S. Fish and Wildlife Service) published the “Redbook” listing 63 species threatened with extinction.
- In 1966 Congress passed the Endangered Species Preservation Act to protect fish and wildlife on certain public lands.
- Congress took a step further with the Endangered Species Conservation Act of 1969, expanding the list of endangered species to include amphibians, reptiles, and invertebrates and counting those species threatened worldwide.

The environmental fervor was heightened following Earth Day on April 22, 1970 and protecting animals from extinction became a national priority.

That brings us to 1973.

While there was a great deal of environmental fervor, perpetuated by the Earth-day movement, the environment wasn't the only issue of concern.

What else was happening in the world in 1973?

- I was a student at the University of Idaho.
- It was the first time that UPC barcodes were used.
- The Rabies vaccine was improved, requiring only five arm shots, compared to the 14 to 21 abdominal shots used previously.
- The Sears Tower was completed in Chicago.
- Billie Jean King defeated Bobby Riggs.
- OPEC doubled the price of oil. Over the course of a few months, oil prices in the United States went from a \$1.50 a barrel to nearly \$12.
- A cease-fire was signed on the War in Vietnam and the bulk of American troops returned home.
- Egypt and Syria attacked Israel.
- Roe vs. Wade was decided by the U.S. Supreme Court.

- The Watergate tapes were released.

The nation and the world were facing tumultuous times. We were looking for reconciliation after a very divisive Vietnam War. And while there was much to debate in Congress, surprisingly, the Endangered Species Act was something that brought people together. There was near unanimity in Congress and there was very little outside opposition. Even the NRA supported the bill.

There was some debate centered largely on the potential preemption of the traditional state authority to manage wildlife. Senator Ted Stevens of Alaska unsuccessfully proposed an amendment to strengthen state authority under the Act. Proponents, including a Republican Congressman from New York, assured that the act “adequately protected legitimate State interests, powers, and authorities...by providing for concurrent Federal/State jurisdiction...” With the assurance that the ESA wouldn’t usurp state authority, the Congress approved the act by an overwhelming majority and most Americans supported it.

People wanted to preserve the bald eagle, one of our national symbols. They liked the manatee, the California condor and the ruby-throated hummingbird to name a few. The loss of these animals posed no obvious threat to health or safety, but their extinction would have impacted our quality of life and national psyche.

And what was the price to protect these precious animals? It was assumed by most - politicians and conservationists included - that the cost to save these species and protect their habitat would be “minimal.”

But, regardless of the price, there was – as one journalist noted – a “reservoir of good will” towards these endangered and charismatic beasts and birds.

So, with the stroke of his pen, President Nixon brought the act to life. At the signing ceremony, he said, "Nothing is more priceless and more worthy of preservation than the rich array of animal life which our country has been blessed."

The United States Supreme Court would later call the ESA "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation."

It is interesting that something that received such praise and brought so many people together in 1973 is now so divisive. The “reservoir of good will” that once existed has been drained.

The effects of implementing the ESA have registered an 8.0 on the Richter scale of environmental legislation. It shook the foundations of traditional views on fish and wildlife management and species conservation. The laissez-faire conservation philosophies of previous generations were toppled and replaced with an aggressive, command-and-control philosophy. But what about the aftershocks of the ESA? Many Americans have been left to meet bitter conflict, lost property rights, and costly, seemingly endless litigation.

So what happened to the cooperation and collaboration that led to the enactment of the ESA? It got lost in litigation.

And why has there been such controversy under the 1973 Act? Was it so different from its predecessors? Absolutely.

The 1966 version directed federal agencies to protect species where “practicable.” Section 4 of the 1973 edition requires that species be listed “without reference to possible economic or other impacts.” In a 1978 case, the Supreme Court interpreted this language to mean that “the value of endangered species is incalculable”, that a listed species must be protected “whatever the cost”, and that there are no exceptions.

Section 7 prohibits any action by a federal agency that would jeopardize a listed species or substantially modify its habitat. In essence and with few exceptions, no matter how important the federal or state interest, it is essentially secondary to the interests of any species on the endangered species list.

One of the topics of discussion for this conference is biodiversity: the notion that all life on earth is part of one great, interdependent system. It is a blanket term for the natural biological wealth that sustains all life and well-being. A central tenet of biodiversity is balance -- a balance that I believe must include not only biological, but also the social and economic factors. It is balance that leads to a holistic and healthy environment. It is our life support system.

Therefore, we must value biodiversity, but it must not be our only value.

We must also value the rule of law...the Constitutional protections of private property rights, due process, and state sovereignty.

Of course, in balancing these interests, it is impossible to place a value on a species that faces extinction...it is simply incalculable. And yet, we can calculate the resources we have available for species...and unfortunately, our resources are finite and spread too thin to meet an infinite number of needs.

It is no secret that over the past two years, states across the country have been facing the worst fiscal crisis since World War II. We’re counting every piece of paper, every paperclip...every penny. The resources are short. Many states are cutting education. Some are releasing criminals early from prison. Others are cutting back on essential services like healthcare for children, the underprivileged, and the aging.

That’s why it’s paramount that the government allows the landowners and citizens to go forward with innovative ideas that will bridge the gap between our finite resources and species conservation.

So, you can imagine the frustration among our citizens from the seeming hypocrisy of government. They are feeling the pains of government cuts that are adversely impacting their lives. At the same time, federal agencies, the courts, and many environmental organizations are telling them we need to spend more to improve the quality of life of a listed species.

We have this collision of environmental ideals with social, political, and economic reality. It is a difficult dilemma. The economy ebbs and flows, but extinction is forever.

We have to keep things in perspective.

And so, while Americans still believe in the importance of conserving species, it is becoming increasingly clear that the ESA fails to recognize the need for balancing environmental interests with social and economic realities. The ESA should help create a symbiotic relationship between species and people.

Still, even measured purely in terms of species recovery, the ESA has largely not met expectations. In 30 years, more than 1,200 species have been listed. If our goal is simply to document endangered species then we have been successful. But what about recovering these precious populations?

Has the ESA been successful in actually helping species? Do we have meaningful, measurable results?

The answer is: it's debatable and that's exactly the problem.

It should be obvious, but instead it's debatable.

Of the 1200 plus listed species, how many have been delisted? According to the latest reports the number is in the mid-thirties. Seven were removed from the list because they went extinct. Thirteen were removed because of "data error" - in other words they never should have been listed in the first place.

Eleven species recovered essentially on their own in response to controls on actions adversely affecting the species. The banning of DDT, for example, permitted the brown pelican and the bald eagle to recover. Strict regulation of hunting allowed the American alligator to recover.

Three others recovered through concerted effort, and I am especially proud of one such effort: the recovery of the peregrine falcon, which hinged on the work of a private group - the Peregrine Fund - based in Boise, Idaho. This tremendous effort has been memorialized in a new book, *"Return of the Peregrine: A North American Saga of Tenacity and Teamwork."* The peregrine is a great success story but not just because of the recovery of this majestic bird. It is also because it is a tremendous example of what can happen when people cooperate.

I can well imagine that on some future occasion, I'll hold up the book that you are compiling through this conference as another great example of what can happen when people come together to solve difficult problems. This will also be a success story.

As for the thirty-some species that have been de-listed, can we point to the success of the ESA? It's tough to say. While extinction and data error are both logical reasons to delist a species, I don't think they prove that the Endangered Species Act has been successful.

Some contend that the ESA has benefited listed species by simply preventing their extinction. Even if we're generous again and assume this is true for many species, I still have one question: Are we satisfied?

I can tell you where the ESA has found success...and that is in creating litigation, controversy and conflict.

Rarely do we hear about an endangered species without reference to a lawsuit.

And while it's great for the attorneys, litigation rarely helps the species. Too often, money that could otherwise be used for on the ground habitat restoration and recovery projects is siphoned away to pay for virtually never-ending legal battles. More lawyers than species have benefited from the Act.

The sad truth is that the ESA too often leads to conflict, when instead it should lead to cooperation, conservation and recovery of the species.

And yet, in the existing law, while there is an entire section devoted to listing, there is not a similar section dedicated to recovery.

The Endangered Species Act is driven by the listing process. However, listing alone doesn't do any good for the species and it certainly doesn't do any good for the states and the landowners.

Think about this in terms of what happens in a hospital emergency room. We would never accept a health care system in which the ambulance delivers the patient, the emergency room takes their name and vital signs and then moves them to the waiting room where they never see a doctor. If I go to the hospital, I expect to be treated and released, not admitted and ignored.

Unfortunately, under the ESA that is exactly the system we accept.
Are we satisfied?

We need a better prescription for endangered species and the Rx should be achieving recovery, not simply avoiding extinction.

In Idaho we have endangered salmon, bull trout, wolves, lynx, snails and eagles; in all, 29 listed species. California is home to 296 listed species. Consider Hawaii: the entire state could fit within the borders of Santa Barbara and Los Angeles Counties, and yet it has more endangered species than any state, including California. The list just keeps growing, and like the lyrics of the famous song, *Hotel California*, “you can check out anytime you like, but you can never leave.”

One of the problems lies in the fact that in the past 30 years, the federal government has not taken advantage of the key resources and allies highlighted in Section 6 of the Act. Washington, D.C. does not have exclusive access to the best science, nor the most efficient operations in terms of getting work done on the ground. That’s where the States and private property owners can and must play an integral role, both in the listing and the recovery process.

With limited funds, shouldn’t we make a concerted effort to maximize the best of our shared resources to find better and more cost effective solutions?

And wouldn’t the whole process be better if it encouraged innovation with incentives to protect species? Right now, there is a fear of endangered species because the law focuses on punishing those who do not comply, rather than rewarding those who voluntarily engage in conservation efforts.

For example, in one state, when a large piece of property goes up for sale, it is not uncommon to see the words, “No Birds” on the for sale sign. What does that mean? It is an assurance there are no endangered birds on the property. A potential buyer has no need to fear they would be unable to move forward with their plans. No birds equals no problems.

If you find a precious metal on your land, your property value goes up. But isn’t it sad that when you find a precious endangered species, your property value plummets?

The 5th Amendment to the United States Constitution guarantees that no one shall “be deprived of life, liberty, or property, without due process of law.” Some private property owners might ask if that includes being deprived of the use of their land.

The 5th Amendment also guarantees that no “private property [shall] be *taken* for public use, without just compensation.” So what does that term, “taken” mean? For endangered animals under section 9, it means “to harass, harm, pursue, hunt, ... capture...” or otherwise adversely affect the species. Using that definition, I can think of a number of property owners who would say that they’ve been “taken” by the federal government.

The bottom line is that ESA mandates can have severe impacts on the use and value of privately owned property. When severe restrictions are imposed without compensation by the federal government, the Act shifts costs and burdens to individual businesses and citizens. Yet, if the intent of the Act is to conserve species for the benefit of *all* citizens, then the cost should be shared by *all* citizens. Too often that isn't the case.

So what is the incentive? Over 75 percent of listed species depend on private land for all or part of their habitat. With that in mind, shouldn't there be an incentive to improve private property to protect critical habitat? If you were the endangered species, wouldn't you want the landowner to have incentives to save you, rather than to bury you? Currently, there are far more disincentives and unless that changes, it leaves little hope for many species.

Over the years, there have been attempts to improve the Act. There were amendments made in 1978. In 1982, among other amendments, Senator Jim McClure from Idaho attempted to steer the Act toward "creative partnerships between the public and private sectors ...in the interest of species and habitat conservation."

In 1988, amendments dealing with recovery plans, monitoring, and the review of expenditures were enacted. In spite of these efforts and modifications, time has shown further need for improvement.

While I served in the United States Senate, I also led an effort to bring needed reform to the ESA. I concentrated on building a strong, bipartisan coalition that focused on strengthening conservation by encouraging greater cooperation with landowners. We had a good bill.

Among various provisions of my bill was one designed to streamline the consultation process between federal agencies so that private property owners wouldn't be burdened by lengthy consultations.

I mention this because on one occasion I held a meeting with representatives of all the federal agencies involved in ESA, including National Marine Fisheries Service, Forest Service, BLM, US Fish and Wildlife Service and others all sitting around the same table.

I asked what I thought was a simple question, "Which agency takes the lead on an ESA consultation?" Their response was symptomatic of the problem; each agency gave a different answer.

That should tell us something. If the process is too complicated for the federal agencies that are responsible for administering it, how can we expect private citizens to understand and cooperate with what they're being asked to do?

My bill, "The Endangered Species Reform Act," would have made incremental, but significant, changes to the ESA. Ultimately, the bill was not successful. I suppose it was the victim of timing and rejected by some who wanted to use my bill to fix everything wrong with ESA in one fell swoop. In the years since, I have had both former colleagues in the Senate and other advocates for reform who have told me that they wish that they hadn't tried to totally rewrite the ESA. They now agree that they should have supported the incremental changes in my bill.

But where we fell short in Washington, D.C. to change the letter of the law, many of the states have been successful in carrying out the intent of those proposed changes.

When I became Governor, one of my first actions was to establish the first state Office of Species Conservation in the country.

With the leadership of Jim Caswell and the Idaho Office of Species Conservation, we've engaged landowners in community wide conservation efforts. We have created water banks aimed at buying water from willing sellers to aid the migration of our anadromous fish, and we have entered into broad conservation agreements with the federal agencies under which private landowners can protect their livelihoods while working to improve habitat.

We are also building conservation efforts for sage grouse, slick spot peppergrass and other species not yet listed in hopes that we will get ahead of the curve. I am not content to wait for the Federal government to tell me what we have to do when we could be doing it now, before a species is ever listed.

With regards to fish, I've worked to build a regional coalition of the four Northwest governors to clearly identify an agenda that crosses state and political boundaries for the conservation and recovery of salmon and steelhead.

It is a strong statement when two Democratic governors and two Republican governors, each representing his or her own sovereign state, come together on such a divisive issue, but it shows that leadership and cooperation on ESA issues can be found outside the Beltway.

The fact is that it is the states and not the Federal government who are leading the way.

Our four governors' agreement was the blueprint for the Federal Biological Opinion, which led to real, on-the-ground conservation and habitat improvement projects.

Unfortunately, a federal court decision spawned from an ESA lawsuit has put on hold this Bi-Op because of a "technicality." Isn't it ironic that the Act that is intended to recover and protect species could have potentially voided a recovery plan during a time of record salmon returns? In June of this year, the four governors met in Boise to reaffirm our commitment to the principles outlined in our original agreement. We agreed to continue our support for the framework of the Biological Opinion.

We're not going to sit around and do nothing for a year pending a rewrite. It's not fair to the fish and it's not fair to the landowners to call time out while a technicality is corrected.

We know what works and what needs to be done and we're going to continue to do it. Now, we just need the risk-averse federal government to help us or move out of the way and let the states be innovative and get things done on the ground.

Also, we know that wildlife management programs are most effective when they are based on sound science and not on sound bites. But until the ESA produces definitive results, we're often left with rhetoric.

This shouldn't be the case for the country that pioneered wildlife conservation.

Seventy years ago, Leopold published the first wildlife management textbook and defined the task of conservation as producing sustained populations. He said it was as much about taking action as it was about stopping harm.

This management approach rebuilt populations of America's most popular game wildlife - deer, elk, wild turkeys, and others - which themselves were dangerously scarce in those days.

We have come to expect results from our game management programs, and yet, when it comes to species recovery we seem resigned to accept only conflict.

We can do better.

In the past ten years of working on this issue, I have heard from thousands of individuals, both from Idaho and around the country, and held numerous hearings on ESA reauthorization. Throughout that time I have never heard anyone suggest that they don't subscribe to the recovery of the species. I've never heard anyone say we should turn our back.

I believe that Idahoans, and all Americans, should also play a bigger role in species recovery. We need a culture of conservation that allows the states to set our own goals and then in public-private partnerships, encourages us to achieve real results.

And what's the federal government's role? At every step, they should assist the states...their role is to help make it happen, and not to make it harder.

I believe 30 years has taught us a few lessons and it is time to put those lessons into practice.

And while there are many ideas on how the law might be changed, we can use what works in practice to rework the spirit of the law...not to minimize species protection, but to maximize our combined resources and not to weaken the ESA, but to strengthen our ability to truly achieve recovery. The political reality is that the ESA may not be amended in the short term. However, I believe a functional Endangered Species Act that focuses on recovery is possible.

We'll begin with changes that mirror the success we've seen on the ground in Idaho and in other states. And we'll create a partnership that will allow us to move from simply listing species to actively recovering them.

As chairman of the National Governors Association, I am already working to test my vision for strengthening and improving the ESA. This goal is a priority for many of the nation's governors and will continue to be a priority of mine both at home and on the national stage.

Governor Bill Owens of Colorado is taking the lead as the Chairman of the Natural Resources Committee for NGA and we also have a strong voice for needed improvements from leaders like New Mexico Governor Bill Richardson. There is bipartisan support for improving the ESA and the time is right.

I believe there are key principles that should guide our efforts. We must engage people in the problem so that they can help to find the solution. Private citizens, business and communities, especially those directly affected by conservation decisions, should have a seat at the table.

We must also bring people together, in a formal setting, to make formal agreements so they know where they stand. The process should not become a game of “hide the ball.” There should be no surprises.

And, we need the letter of the law to encourage efforts that will achieve the spirit of the law.

On this last principle, let me be clear. When we find obstacles in the letter of the law, the solution does not always have to be to amend the law. Greater flexibility would allow the states to implement innovative solutions that focus resources on the ground.

I would recommend pilot authorities that succeed in achieving habitat restoration and species recovery on the ground.

Let me specifically suggest that there are five passages in sections 4, 6 and 10 of the ESA that lend themselves to pilot authorities.

The first three passages are in Section 4 and refer to the best available data, efforts of the states, and critical habitat designation.

The reference to using the best “commercial data available” after “conducting a review of the status of the species” makes conservation biology sound as if it were an exact science. And with no malice towards any biologists, I think it is fair to say that it is not an exact science. Sometimes the best data available are actually anecdotes, and with or without empirical data, a review of species status always involves significant interpretation and subjective judgment. We can balance these uncertainties with wider professional involvement. We must involve all our scientists: public, private; federal, tribal, state, and local.

Pilot authority would allow the Secretaries of Interior and Commerce greater opportunities to solicit proposals for conducting status reviews and may yield more complete determinations.

And with regards to the “efforts of states,” Section 4 directs the Secretary to consider what efforts are being made by the States. This may be the clearest example of where a pilot authority would be helpful.

As a result, where a state program has merit and may actually preclude a listing, the courts have been reluctant because the act is not explicit as to how the secretary should “take into account the efforts of a state.” Therefore, states have no incentive to address species of concern because, ultimately, the long-arm of the federal government will take over and state authority will subside. With pilot authority that would defer to a state program under specific circumstances, we could be innovative and proactive.

Section 4 also mandates that critical habitat be designated concurrently with listing, with only few exceptions. This has been the focus of much litigation in recent years and has consumed valuable resources that would otherwise be used on the ground. Controversy on this point has commandeered the entire listing program. With a pilot authority, those who advocate moving critical habitat designation into recovery planning could try it and then we can evaluate the results in terms of real conservation instead of jurisprudence.

Section 6 – Cooperation with the states – is the fourth area that is ripe for pilot authority. Many Section 6 programs are focused on recovery, but I read Section 6 to allow states to make use of even more ambitious partnerships and to expand their responsibilities to include entire recovery programs within their boundaries. I think it is of critical importance to note that the 1973 Senate Report on the ESA states that the purpose of the Act is to promote “cooperative management between the states and the federal government.” That sounds like a favorable endorsement of Section 6, so let’s run with it.

In the 1973 Senate debates on the original bill, Senator John Tunney, a Democrat from here in California and the Senate manager of the bill, called section 6 “perhaps the most important section” of the Act.

Senator Ted Stevens of Alaska who still serves in the Senate, called section 6 “the major backbone” of the Act.

And yet, Section 6 has not been utilized as I believe it should, nor as it was apparently intended. I agree with what these Senators stated 30 years ago.

Section 6 is the most important provision in the ESA. It authorizes the Secretaries of Commerce and Interior to approve cooperative agreements with the states. Let me repeat that...it authorizes the Secretaries of Commerce and Interior to approve cooperative agreements with the states.

One example of how this can work is a conservation agreement that we just recently signed in Salmon, Idaho with state, federal, tribal and private interests. This agreement provides a framework for a wide range of long-term conservation activities aimed at reducing irrigation-related practices known to limit the productivity of species like bull trout, salmon and steelhead.

The agreement provides the opportunity for participating landowners and other irrigators to receive certain ESA assurances of protection from federal enforcement of the Act, while conservation measures are pursued on their property.

We know this works because two years ago we brokered a similar agreement in Central Idaho that has resulted in over 100 successful conservation projects.

Section 6 is perhaps the only provision in the ESA that provides hope for states to manage and enforce programs under federal law.

Many federal environmental laws provide for "cooperative federalism," or components of federal law that are appropriate for oversight and implementation by the states – the Clean Water Act and the Clean Air Act immediately come to mind.

I believe Section 6 of the ESA can be utilized in a similar fashion as section 402 of the Clean Water Act, where states have the opportunity to tailor their programs to meet their needs once they receive appropriate approval by the federal agency delegating authority. Experimenting with such an idea is possible under the existing statute and it would be facilitated with pilot authority.

Finally, there is Section 10. On its face, Section 10 makes it sound easy to obtain an incidental take permit...but in reality we have found it's too costly and too difficult for individual landowners who often do not have the resources nor the expertise to complete the process on their own. As a result, small landowners are often overwhelmed with bureaucracy and inflated costs.

Based on our experience with these small landowners, I believe that a pilot authority that would allow us to include many small adjoining land owners on a single habitat conservation plan would not only save resources, but allow us to learn what occurs in a larger area of habitat instead of compartmentalizing our approach with separate plans for each small landholding.

Of course, this would require pilot authority for both the ESA and the National Environmental Policy Act, but considering that NEPA experts are already considering such pilot authorities, there is no reason that such an innovation couldn't work under the ESA.

With regards to habitat conservation plans, let's take the blinders off and recognize that there are common issues that can be addressed more quickly and at less cost if we address them pragmatically.

We need greater latitude to permit landowners to carry out their plans immediately. Much of the prohibitive cost goes to up front paperwork. We should instead invest in measuring performance. After all, when it comes to voluntary conservation, we should bring more people into the effort, so we can get more conservation on the ground.

There are other modifications that can be made to the ESA and I know that any change will enjoy a healthy and vigorous debate. The time has come. We cannot be satisfied with a law that fails to recover but a handful of species over 30 years. It is time to reflect on the lessons we've learned and to envision where we want to take the ESA over the next 30 years. Let's use this conference to help chart that course.

I will be fully engaged with my former colleagues on Capitol Hill and with my fellow Governors in all 50 states. It may be a long and difficult journey and at times we will find ourselves swimming against the current; but like the salmon, it's a journey worth taking.

This is about protecting our environment and being good stewards of the land, the fish and wildlife. Our charge is too great to be satisfied with rare and isolated success stories. We have an obligation to preserve this wonderful natural legacy for future generations.

If the Endangered Species Act is to be a meaningful part of preserving that legacy, we must make the changes that get us out of the courtroom and onto the ground.

Let's declare an end to the era of endless studies and litigation. And let's invite a new generation of Americans to embrace conservation in a spirit of action and cooperation.

Thank you.